IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9044 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE FOREST DEVELOPMENT CORP LTD

Versus

RAMANBHAI RANCHHODBHAI PATEL

Appearance:

1. Special Civil Application No. 9044 of 2002

NANAVATI ASSOCIATES for Petitioner No. 1

MR SUNIL S JOSHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 21/04/2004

ORAL JUDGEMENT

Rule. Mr.Joshi appearing for respondent waives service of rule. With the consent of learned counsel for

parties matter is taken up for final hearing.

2. The short facts are that the respondent was employed as daily wager and he was posted at the residence of the Chairman. It is the case of the respondent that he was appointed in the permanent set up. It is the case of the petitioner that the respondent did not remain on duty and no leave report was submitted. As per the petitioner the show cause notice was issued and thereafter on 21.5.97, the decision was taken for termination of his services. The respondent raised the dispute under I.D.Act which ultimately came to be referred to the labour court vide Ref.(LCG) No.370/97. The petitioner was served in the proceedings before the labour court. However, the opportunity given to the petitioner was not availed of and as a result thereof as per the petitioner, the matter proceeded exparte and the final award came to be passed. It is the case of the respondent that it was for the petitioner to lead the evidence and crossexamine the witnesses of the workman and since the same was not done, the labour court had no option but to proceed in accordance with law. As per the petitioner the labour court proceeded with the matter even though both sides, namely, on behalf of workman as well as employer were not present. The award which is passed by the labour court on 31.1.2002 is challenged by the petitioner in this petition.

3. I have heard Mr.Chudgar for the petitioner and Mr.Joshi for the respondent. Upon hearing the learned counsel appearing for both sides, it appears that the labour court has proceeded on the basis that the opportunity for crossexamination was given and the same is not availed of. The labour court has proceeded on the basis that proper evidence is not led by the employer. The perusal of the proceedings which is produced by the petitioner shows that on 28.12.2001, the court has recorded that there is no oral argument and the matter was fixed for award and thereafter the awarded has been passed on 31.1.2002. So far as not properly defending the proceedings before the labour court on behalf of petitioner is concerned, the said aspect is apparent from the record. Since it is the case of the petitioner in the proceedings before the labour court that the respondent was a daily wager and since no proper evidence could be led before the labour court on behalf of the petitioner, considering the facts and circumstances of the case, I find that if the matter is remanded to the labour court for giving opportunity to the petitioner in the proceedings of reference, the same would meet with the ends of justice.

4. However, as the petitioner is defaulter in properly availing of the opportunity given to it, and therefore, if the matter is remanded unconditionally, it would encourage the litigant to indulge into dilatory tactics and in any case one who has defaulted can not be allowed to earn premium of its own conduct. As such there is no fault on the part of the workman and on account of default in not properly defending the proceedings on behalf of petitioner, the workman is dragged into litigation before this court. Hence, even if the matter is to be ordered for reconsideration before the labour court, the petitioner should pay costs for compensating the default caused in proceedings before the labour court as well as costs of the present litigation. The labour court has ordered for reinstatement with full backwages and therefore even if the matter is to be considered for remand in addition to costs for compensating the default, the petitioner should also be directed to deposit 25% of ordered backwages with a view to see that the petitioner can not earn premium out of his default, and at the same time the respondent workman may be able to utilize reasonable amount for his survival. I would have examined the matter further in this regard, however, Mr.Joshi for respondent has agreed that if the amount of costs and 50% of the amount which may be ordered to be deposited is allowed to be withdrawn by the respondent workmana and 50% is ordered to continue as the deposit with the labour court, the respondent is agreeable for remand of the case to the labour court. Ld.counsel for both sides have assured that if the proceedings before the labour court are expedited they shall cooperate with the proceedings before the labour court and this court may direct the labour court to decide the reference after remand within a particular time limit as the termination is of the year 1997.

5. In view of the aforesaid discussion, the passed by the labour court, dated 31.1.2002 in Ref (LCG) No.370/97 is quashed on condition that the petitioner pays the amount of Rs.7,500/- being costs by way of compensation for default caused on behalf of the petitioner in not properly defending the proceedings before the labour court and the costs of present litigation and there shall be further condition to deposit Rs.25,000/- with the labour court within a period of four weeks from today. It is further directed that as and when the amount of 25% of backwages, i.e. Rs.25,000/- is deposited, the respondent workman shall be at liberty to withdraw Rs.12,500/- upon giving undertaking to the labour court that the withdrawal shall

be subject to final order which may be passed by the labour court after remand.

6. Ref.(LCG) No.370/97 is restored to file and the labour court shall give opportunity to the petitioner to putforward the defence and shall decide the reference after giving opportunity to both sides finally as early as possible preferably within a period of six months from the date of receipt of writ of this court.

7. As the petitioner has deposited Rs.5,000/pursuant to the interim order passed by this court towards costs, the respondent shall be at liberty to withdraw the said amount and the petitioner shall be required to pay Rs.2,500/- to respondent within four weeks from today.

8. The petition is allowed to aforesaid extent. Rule is made absolute accordingly.

21.4.04 (JAYANT PATEL,J)